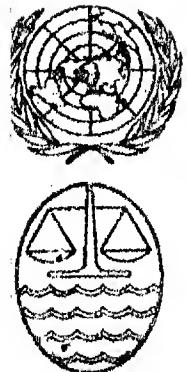




UNITED NATIONS

THIRD CONFERENCE ON THE LAW OF THE SEA



PROVISIONAL

For participants only

A/CONF.62/C.2/SR.25
7 August 1974

ORIGINAL: ENGLISH

Second Session

PROVISIONAL SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

Held at the Parque Central, Caracas,
on Monday, 5 August 1974 at 10.45 a.m.

President: Mr. AGUILAR Venezuela

later: Mr. PISK Czechoslovakia

Rapporteur: Mr. NANDAN Fiji

CONTENTS

Exclusive economic zone beyond the territorial sea (continued)

Corrections to this record should be submitted in one of the four working languages (English, French, Russian or Spanish), preferably in the same language as the text to which they refer. Corrections should be sent in quadruplicate within five working days to the Chief, Documents Control, Room 9, Nivel Lecuna, Edificio Anauco, and also incorporated in one copy of the record.

AS THIS RECORD WAS DISTRIBUTED ON 7 AUGUST 1974, THE TIME-LIMIT FOR CORRECTIONS WILL BE 14 AUGUST 1974.

The co-operation of participants in strictly observing this time-limit would be greatly appreciated.

EXCLUSIVE ECONOMIC ZONE BEYOND THE TERRITORIAL SEA (A/9021, A/CONF.62/L.4, A/CONF.62/C.2/L.17, L.18, L.21, L.22, L.28, L.30 and L.32) (continued)

RAJA TRIVID ROY (Pakistan) said that institutions and laws reflected the balance of interests in which they were born and they became redundant if they did not keep pace with changing conditions. The existing law of the sea had been framed to serve the interests which were dominant in the 1950s. Since then the world had undergone fundamental changes, notably, the erosion of the authority of big Powers and the curtailment of their privileges. The laws made to serve the old order now faced serious challenge; the situation called for a reconstruction of existing laws to bring them into line with the changed circumstances. That was why the General Assembly had given the Conference the task of framing new laws to give effect to new concepts and to reflect the developments which had taken place since the two Geneva Conferences.

The essence of the concept of the exclusive economic zone was the extension by a coastal State of its jurisdiction to an area beyond the limits of its territorial sea, in which it would exercise exclusive sovereign rights over all the living and non-living resources of the sea-bed, its subsoil and the superjacent waters. The coastal State would necessarily exercise jurisdiction over the preservation of the marine environment, the control of scientific research and the emplacement of artificial installations. Such established freedoms of the international community as were consistent with the exercise of the coastal State's jurisdiction would remain intact.

His delegation thought that the exclusive fisheries zone and the continental shelf should be subsumed in the exclusive economic zone, but it would consider the extension of the economic zone to the outer limit of the continental margin when that limit exceeded 200 miles. Probably, the controlling and supervisory jurisdiction of the coastal State over the contiguous zone should also be subsumed in the economic zone, but that would depend on the final definition of the economic zone. His delegation subscribed to the view that the legitimate interests of the land-locked and other geographically disadvantaged States should be taken into account, but a distinction must be made between living and non-living resources. Existing law left no room for anyone to share in the rights of the coastal States with regard to non-living resources, but, where living resources were concerned, ways might be found of accommodating the interests of the land-locked and other geographically disadvantaged States.

(Raja Trivid Roy, Pakistan)

His delegation was not happy with the distinction drawn in the Nigerian draft articles (A/CONF.62/C.2/L.21) between renewable and non-renewable resources, for while it was envisaged that the coastal State would have sovereign rights over non-renewable resources, merely exclusive rights were provided for the exploration and exploitation of renewable resources. In his delegation's view, the coastal State should have exclusive sovereign rights over both renewable and non-renewable resources.

His delegation agreed with the representative of Peru that in article 15 of the nine-Power draft articles (A/CONF.62/L.4) the "other legitimate uses of the sea" should be spelled out. In addition, the residuary powers in the economic zone should be vested in the coastal State, and the jurisdiction which the coastal State enjoyed under the 1958 Geneva Convention should be subsumed in the exclusive economic zone concept. The inclusion of a provision to that effect in the draft articles would obviate the need for a separate régime for the contiguous zone.

Every State had the right and duty to utilize all its available resources for the welfare of its people. To that end, marine resources had a special significance for developing countries. No country could have a better claim to the resources in the sea adjacent to its coast than the coastal State itself, and his delegation appreciated the reasons of security and economic development which had led several States to extend their sovereignty over wider areas adjacent to their coasts. Accordingly, it supported the 200-mile exclusive economic zone. The exclusivity of coastal State jurisdiction did not mean that other States would be deprived of access to the zone; they would be able to participate in the exploration and exploitation of the resources of the zone by making mutually beneficial arrangements with the coastal State.

The just claim of coastal States to exclusive sovereign rights over the marine resources lying off their shores had found wide support among developing nations, and even some developed countries had supported the exclusive economic zone. The idea of the zone had been favourably noticed by the International Court of Justice in its decision of 2 February 1973 in the United Kingdom versus Iceland Fisheries Jurisdiction Case. His delegation welcomed the consensus in favour of the exclusive economic zone. It would be a betrayal of that consensus if attempts were made to dilute the content of the zone concept so as to render it meaningless. The Conference should approve the

English

Page 4

(Raja Trivij Roy, Pakistan)

concept of the zone in its entirety; any dilution would provide added justification not only for the broader territorial seas already proclaimed by some States, but also for similar action by others.

Mr. VARVESI (Italy) said that, in the Sea-Bed Committee, his delegation had opposed the concept of the economic zone, for three reasons: the very real danger that the concept might entail for freedom of navigation; the possible risks of "creeping jurisdiction" over superjacent waters beyond the territorial sea; and the possibility that the economic zone might become a source of disputes because the stakes would be higher than in the past. Discussions at the Conference had shown that those dangers were by no means imaginary.

His delegation nevertheless believed that the reasons put forward by those who favoured the economic zone - the need to protect resources in the coastal areas beyond the territorial sea in order to promote economic development - were valid, and it hoped generally acceptable solutions could be found, based on criteria he would outline.

Different solutions were needed for each type of problem. The concept of economic zone should be based on all the economic rights and obligations of the coastal State in the marine area immediately beyond its territorial waters; but it would be wrong to define the rights and obligations of the various States a posteriori on the basis of an abstract concept of the economic zone. That concept was, in his delegation's view, only a technique used to designate a specific set of rights and obligations.

The individual approach to each specific problem meant that determination of the rights of the coastal State over sea-bed resources should be clearly separated from that of its rights over fisheries. Rights over the sea-bed resources, including scientific research, should continue to be governed by the principles of the Geneva Convention on the Continental Shelf up to a uniform maximum limit to be agreed upon. Account should be taken of the fishing interests of other countries, neighbouring or not, and a suitable role should be assigned to appropriate regional or sectoral organizations.

/...

(Mr. Veronesi, Italy)

His delegation was firmly convinced that the medium- and long-term risks of creeping coastal State jurisdiction would jeopardize the interests of the whole international community, including those members who today defended progressive extension of national sovereignty over the oceans. To obviate those risks and maintain freedom of navigation, any provisions adopted should make it quite clear that State sovereignty should not extend to the economic zone; in that connexion he had noted with satisfaction the remarks of the representative of Mexico. Moreover, the superjacent waters of the area should be treated as high seas, with adjustments made to reflect the new regulations to be adopted with regard to fisheries. Any residual régime applied in the area should be that of the freedom of the seas, not that of the authority of the coastal State.

His delegation could not accept extension beyond the territorial sea of the general jurisdiction of the coastal State over pollution control. However, it was prepared to agree that the coastal State should have specific rights and obligations to supplement the rights and obligations of other States with respect to pollution control.

Finally, suitable solutions must be found to prevent international disputes because the stakes were higher than in the past. However, there could be no regional solutions in that respect: all solutions must be regulated by general international law, which at present was the Geneva Convention on the Continental Shelf.

He noted with satisfaction that certain delegations whose previous views on delimitation of marine and ocean spaces had been somewhat unrealistic, had made an effort to change their positions. Nevertheless, the draft articles in A/CONF.62/C.2/L.18 appeared to maintain what was to his delegation an unacceptable position.

Mr. ROE (Republic of Korea) said that his delegation supported the concept of the 200-mile economic zone in the belief that the interests of the coastal States, particularly the developing ones, in the natural resources of the area adjacent to their territorial seas should be respected, and that the existing international régime concerning the conservation and utilization of living resources was largely inadequate.

/...

(Mr. Roe, Republic of Korea)

The rights and competences of coastal States, such as the exclusive right over renewable living resources, sovereign rights over non-renewable mineral resources, specific rights to control marine pollution and scientific research were generally acceptable to his delegation, which also believed that freedom of navigation and the freedom to lay submarine cables and pipelines should be guaranteed.

As to the mineral resources of the sea-bed and subsoil, his delegation was prepared to support, as the outer limit of national jurisdiction, a distance criterion of 200 miles in the first place and also the outer edge of the continental margin when the submerged natural prolongation of the land mass extended over 200 miles. That concept of the continental shelf was, in his delegation's view, not at all incompatible with the concept of a 200-mile economic zone.

His delegation was particularly concerned with the utilization of the living resources of the sea. The Republic of Korea, with a territory of about 100,000 square metres and a population of over 34 million, had many problems: its natural resources were limited, and it suffered from a consequent lack of capital. Nevertheless, it had managed to develop its economy, an important aspect of which was the fishing industry. Over 1.5 million people in the Republic of Korea depended upon fishing for their livelihood. The Republic of Korea was now one of the major distant water fishing nations, with over 600 fishing vessels engaged in ocean fishing all over the world. In developing that industry, the country had endured tremendous hardships and sacrifices, including loss of human life. The future of Korean fishermen largely depended on the result of the decisions taken at the present Conference.

He therefore appealed to all delegations to pay sufficient attention to establishing a truly equitable régime of the economic zone in relation to the renewable living resources of the sea. His delegation would be most happy if the régime of exclusive jurisdiction of a coastal State over the living resources of the economic zone could leave some room for the fishermen of developing countries to have access to part of those resources not fully exploited by the fishermen of the coastal State. He earnestly hoped that general agreement could be reached on the principle that, in order to guarantee the maximum utilization of the living resources of the sea, coastal States should allow such access on a non-discriminatory basis and under reasonable conditions.

/...

Mr. LISTRE (Argentina) said that the economic zone should be clearly defined in terms of the authority and obligations of coastal States and should not be confused with other jurisdictions such as those of the territorial sea and the continental shelf. The need to protect the economic rights of coastal States was the basis of the concept of the economic zone and of its extension to 200 miles. Those rights were basically sovereign and related to the exploration and exploitation of natural resources. Coastal States should also have jurisdiction over the preservation of the environment, the conduct of scientific research and the emplacement of artificial installations. The exercise of such rights should not affect the established freedoms enjoyed by the international community.

It was a basic principle that the coastal State had exclusive rights in the economic zone; in other words, it alone could decide whether the resources should be exploited by its own nationals or by third parties. A coastal State might choose to allow a third party to exploit any resources which it could not exploit itself, but it must not be under an obligation to do so. Only the coastal State could determine the optimum catch of fish and set the amounts which third parties should pay for fishing rights. Every country would, of course, seek to draw the maximum benefit from the full exploitation of its resources.

The obligations of coastal States should also be clearly defined: for example, they must protect living resources and apply the international regulations for the preservation of the environment; both the coastal State and the international community would benefit from such actions.

His delegation thought that the nine-Power draft articles (A/CONF.62/L.4) were useful and it could accept them on the whole. Indeed, they might be used as a basic document in the Committee's work.

Mr. TANOE (Ivory Coast) said that his country took an active interest in the questions under consideration. In essence, its concerns had been reflected in the statements of the majority of African States during the general debate in plenary meeting, particularly in the statement of the delegation of Senegal, which was the spokesman at the Conference for the peoples and Governments of Africa.

A/CONF.121/10/1

English

Page 8

(Mr. Tanoe, Ivory Coast)

The problem of the exclusive economic zone was perhaps the crux of all the problems being considered at the Conference, and if it was not resolved before long, those who entertained optimistic hopes of the next session would be bitterly disappointed. While the Conference would eventually have to find a global solution to the problems before it, what had to be done now was to get it moving. One way for it to make noticeable progress was for those countries which were anxious for it to succeed to state clearly, and without equivocation, that they recognized the coastal State's sovereign economic rights over the exclusive economic zone and its right to establish an adequate legal order governing the many activities which took place in the zone. That legal order should guarantee respect for the laws and regulations of the coastal State and at the same time preserve the marine environment and regulate scientific research.

The exclusive economic zone was a creation sui generis, based on economic justice, to which people would have to become accustomed. Instead, some countries were expressing doubts about the nature of the zone and nourishing idle preoccupations about its future development, or else they were attempting to empty the zone of all meaning and reduce it to a mere 200-mile line, or at best to a mere receptacle.

The sea-bed beyond national jurisdiction had been declared res communis, but the developed countries wished to make it res nullius. Almost all States, including the developed ones, had stated that they favoured the establishment of a 200-mile economic zone, but the developed countries, by proposing preferential rights were trying to reduce the zone to a meaningless phrase, thus taking away with one hand what they gave with the other, without concern for the contradictions which that attitude implied.

It was clear enough that the exclusive economic zone, unlike the territorial sea, was not an area in which the coastal State would exercise full sovereign powers. Rather it would exercise specific exclusive powers which, although only partial, must, nevertheless, have some coherence.

The many appeals for balanced solutions which had been made at the Conference did not refer to a mere mechanical balance between units that were not of equal weight. What balance could there be between a fishing boat that could not leave its regional

/...

(Mr. Tanoe, Ivory Coast)

area and one which sailed the high seas? Fortunately, it was possible to establish apparent imbalances which were in fact real dynamic balances because they conciliated various interests. That was the sort of balance which must be sought if the development of the poorer countries was not to continue to be held up. In other words, the developing countries could not be satisfied with an extension of the sea area under their national jurisdiction if it did not promote their economic and social development.

The developed countries were surprised that the developing countries wished to recover as soon as possible their sovereign rights over the riches of the sea in order to protect the rights of present and future generations of their peoples. It was understandable that that trend had gathered momentum when certain groups of countries were making reservations about the very fair proposals made by the developing countries so as to secure remunerative prices for their natural resources and to break the strangle-hold of their deteriorating terms of trade. At the same time, the developed countries were very parsimonious in the way they transferred their technology or transferred it only at exorbitant prices, and were most reluctant to devote even a tiny part of their gross national product to the economic and social development of the third world.

His delegation had come to Caracas with an open mind, prepared to help in the search for positive results; but it was not going to be brow-beaten.

There could be no doubt about the willingness of the developing coastal countries to enter into regional and bilateral co-operative arrangements for the optimum exploitation of the fishery resources of the exclusive economic zone. The argument that the exclusive economic zone might be under-exploited because the countries encouraging fishing ventures were under-equipped was an unsuccessful attempt to disguise an age-old concern of the developed countries - that of safeguarding their special interests, which hindered the development of all States.

/...

English
Page 10

(Mr. Tanoe, Ivory Coast)

His delegation found a great deal of merit in document A/CONF.62/C.2/L.21, but it felt that article 2, paragraph 2, of that document was in conflict with the idea of the coastal State's exclusive rights over the zone. It was a prerogative of the coastal State, not of other States, to exercise its sovereignty in making the necessary arrangements for ordered and optimum use of the living resources of the zone. The provision was thus unnecessary, and any insistence on maintaining or strengthening it would make it suspect or even dangerous in his delegation's view. States which for reasons beyond their control were now developing countries were not willing to share the exploitation of their natural resources with developed countries but preferred to exploit all those resources themselves. Why, then, should an instrument that was designed to endure make provision for a situation which by its very nature was only temporary? In that regard, the only express provision which would seem legitimate to his delegation would be one which took due account of the particular situation of the land-locked or otherwise geographically disadvantaged developing countries.

His delegation believed that document A/CONF.62/L.4 could, to a certain extent, be a good basis for negotiation. It was glad that efforts were being made to reach a consensus concerning the exclusive economic zone and other related questions. However, in view of the attitude of certain developed countries, it would seem that the African and other developing countries might have been wrong in not demanding, purely and simply, a territorial sea 200 nautical miles wide. That would have simplified the problem. He wondered, furthermore, whether it was not really in the interest of certain countries to have the Conference fail.

The exclusive economic zone was a good compromise for it was the only solution which gave real meaning to what had been called a territorial sea of a reasonable breadth. In his delegation's view the idea of a territorial sea of 12 miles had not yet been accepted, since it was bound up with the establishment of a genuine exclusive economic zone.

The Ivory Coast, which had not acceded to the Geneva Conventions, was providing in legislation now being enacted for a 200-mile zone of national jurisdiction in which it would have exclusive rights over both living and non-living resources. It reserved the right to define and delimit at a later date the various régimes

/..

(Mr. Tanoe, Ivory Coast)

applicable within that zone. His country was thus concerned not only to ensure the success of the Conference but also to harmonize its position with those of other African nations. Establishment of the exclusive economic zone would not prejudice freedom of navigation and overflight or the freedom to lay submarine cables and pipelines.

Mr. OCHAN (Uganda) said that his delegation wished to restate its position with regard to the economic zone, and to comment on new ideas and proposals that had been advanced. Uganda, as one of the least developed among developing countries and a land-locked State attached great importance to the issue.

His country's under-development was attributable to its geographical position. Progress sprang from rapid and planned industrialization, foreign trade and developed communications, all of which were inadequate in Uganda and in other geographically disadvantaged States. Additional adverse factors were sparse population, poor soil, aridity, high altitude, steep slopes, lack of exploitable mineral resources and distance from markets, which could only be overcome in time through the sound planning, capital investment, technology, skilled labour and good management that were in short supply in all disadvantaged countries. Some land-locked States were obliged to export labour to pay their way.

Such States were heavily dependent upon more powerful neighbours for foreign trade and transportation facilities, and consequently looked beyond their borders for resources to promote development.

The document shortly to be submitted by his own and a number of other delegations proposed that, in return for the land-locked countries' support for coastal States in their claims to extend their jurisdiction to 200 miles over waters that were in fact the high seas - the common heritage of mankind - the latter should recognize the right of land-locked States to explore and exploit all the living and non-living resources within that zone. It also proposed regional and subregional arrangements for that purpose among coastal and land-locked countries.

Coastal States bore heavy responsibilities for proper management, preservation of resources and pollution control in the economic zone, to which land-locked countries could make a modest contribution. The two groups of States should co-operate in ensuring freedom of navigation, overflight and scientific research.

/...

(Mr. Ochan, Uganda)

The proposal of which Uganda was a sponsor was designed to cover both disadvantaged land-locked States and advantaged coastal States. If it were accepted, the noble sentiments repeatedly expressed by the latter would be translated into action.

Finally, the delegation of Uganda rejected the foot-note in square brackets at the bottom of page 4 of document A/CONF.62/L.4 where a distinction was drawn between developed and developing land-locked and geographically disadvantaged States, the motives for which appeared to be somewhat dubious. If that distinction were to be applied to developed and developing coastal States, the former's claim to the economic zone would have to be made subject to reservations and restrictions. Uganda would never associate with a developed State under dubious conditions; its continued association with developed land-locked States was in its own interest.

Mr. Pisk (Czechoslovakia) took the Chair.

Mr. VOHRAH (Malaysia) expressed his delegation's solidarity with other developing countries of Asia, Africa and Latin America in fully supporting the establishment of an exclusive economic zone beyond the territorial sea, up to a limit of 200 nautical miles. Establishment of such a zone should be viewed against a background of a long history of exploitation of marine resources by a handful of advanced maritime Powers, while under-developed countries benefited hardly at all. The establishment of such a zone would for the first time allow coastal States to benefit fully from its living and non-living resources, and would also enable a country such as his own to develop its nascent fishing industry. Malaysia would take the necessary steps in the zone to conserve the marine environment and to prevent pollution, especially vessel-based pollution, which of late had become a very serious problem for his country.

Establishment of the zone would in no way adversely affect the interests of the international community. While it would benefit coastal States, it would also allow other States, the freedom of navigation and overflight and the laying of submarine cables and pipelines which they had always enjoyed. Coastal States would, in the main, exercise exclusive rights over living and non-living resources of the zone. However, his delegation shared the view that scientific research could not be undertaken in the zone without the express consent of the coastal State concerned,

/...

and that that State should participate in the planning of the research and be entitled to participate in it and benefit from its findings.

His delegation shared the view of many others that the régime presently applicable to the continental shelf under existing international law should continue to be recognized in the new convention. The Conference, while redrafting new principles of the law of the sea, should not cast aside all the old ones. His delegation did not share the view that the concept of the continental shelf should be absorbed within that of the exclusive economic zone. Malaysia, as a party to the Geneva Convention on the Continental Shelf had exercised rights under that Convention and enacted legislation in conformity with it.

His delegation wished to listen to the views of more delegations before making any remarks on the question of the relationship between the contiguous zone and the exclusive economic zone, and in particular, on that of whether the powers exercised by coastal States in the contiguous zone under the Geneva Convention on the Territorial Sea should be extended to the economic zone.

His delegation had certain reservations concerning article 6, paragraph 1, of document A/CONF.62/L.4. In keeping with the views on the archipelago concept which it had expressed at the 35th plenary meeting, it was concerned that if archipelagic States were allowed to draw straight baselines connecting their outermost islands, vast areas of marine space, sometimes grossly disproportionate to the land area, would be enclosed, and vast expanses of water which had once constituted high seas would suddenly become subject to the sovereignty of archipelagic States. A further claim by archipelagic States to an exclusive economic zone beyond their territorial waters would create a new dimension to the problem, particularly in the South-East Asia region, where it would result in inequitable and unbalanced apportionment of marine space.

His delegation also had reservations about article 6, paragraph 2, of the same document, as it found that that paragraph did not fully recognize the serious problem that a country such as Malaysia would face. Two groups of Indonesian islands dotted the South China Sea between West and East Malaysia, and the Indonesian archipelagic boundary as claimed would end the free access and communication, so vital for the maintenance of Malaysia's geographical, economic and political unity, which his country had always enjoyed. Malaysia therefore wished to see reflected in that paragraph a clear recognition and guarantee of all its present rights of access and communication.

A/CONF.62/L.4

English

Page 14

(Mr. Vohrah, Malaysia)

His delegation also had difficulty in accepting the provisions of article 7, which, it believed, qualified those of article 6. He wished to appeal to the sponsors of document A/CONF.62/L.4 to give serious thought to the provisions of those two articles.

The views which he had just expressed were without prejudice to Malaysia's position on the régime applicable to island States and islands.

Mr. TREDDINNICK (Bolivia) said that the more than 500 kilometres of Pacific Ocean coastline which Bolivia had had from a very early date as a maritime province of the Incan empire had been maintained by the Spanish colonizers, who had extended Bolivia's limits to the Pacific Ocean. Thus, Bolivia had had more than 500 kilometres of coastline at its independence, and a territorial sea of three miles. That coastline, together with a vast territory rich in saltpetre, guano and copper had been conquered by a neighbouring country in the "saltpetre war" of 1879.

Bolivia was now the only really land-locked country in South America, and it was a geographically disadvantaged country as well, even though four of the five countries which bordered it had extensive coastlines which were fed by numerous and abundantly rich rivers originating in Bolivian territory.

Bolivia's most important national problem was to find a proper and sovereign outlet to the sea. The injustice of 1879, which was truly a mutilation of Bolivian national territory, could not be accepted indefinitely. The modern world was undergoing a complete process of readjustment towards international justice dominated entirely by nobler concepts of civilized relationships between human societies. In this new period of international relations and in a world of scientific and technological progress, the narrow-minded and selfish ideas which had dominated the eighteenth and nineteenth centuries and which had brought about the injustice suffered by Bolivia could not be perpetuated.

Since four of its five neighbours belonged in some fashion to the so-called "200-mile club", Bolivia could not ignore that important trend in the modern law of the sea. It would accept a territorial sea of up to 12 nautical miles measured from the applicable baselines, combined with a regional economic zone of a maximum breadth of 200 nautical miles, in which there was full participation, with equal rights and duties, for neighbouring coastal countries.

A/CONF.62/C.2/SR.25

English

Page 15

(Mr. Tredinnick, Bolivia)

Bolivia was part of the international community, part of a region and subregion, and a member of regional and subregional bodies. His delegation, therefore attached considerable importance to the concept of a regional economic zone. For millions of years the rivers and the winds had carried vast quantities of Bolivia's riches to the seas, the sea-bed and subsoil, thus depriving the land of its resources, including its fertile soil. That process would continue for a very long time, but now, with the needs for growth and social progress of the developing non-coastal countries, it had to be reversed legally. The sea must return to all countries, including non-coastal countries, part of the vast mineral riches which had created the regional economic zone or regional patrimonial sea. Bolivia proposed the term "regional tributary sea" for that economic area because, in its own case, practically all its rivers were tributaries of the Pacific ocean basins, the Rio de la Plata and the Amazon. Now the sea must pay tribute to those countries which for millions of years had nourished it.

In the "regional tributary zone" established between the 12-mile territorial sea limit and the maximum of 200 miles there must be full participation by all neighbouring States, whether or not they bordered on the zone, and participating States must have exclusive common rights, including the power to regulate exploration of the seas, sea-bed and the subsoil and exploitation of the renewable and non-renewable resources of the zone; to adopt necessary measures to preserve the marine environment; and to control scientific research.

Non-coastal and other geographically disadvantaged countries, in accepting extension of the territorial sea from the traditional 3 miles to 12, a tendency which appeared to predominate at the Conference, had already given up part of their rights under the 1958 High Seas Convention. Article 2 of that Convention provided for participation by non-coastal States in exploitation of living resources, and international justice required that non-coastal countries participate in exploitation of non-renewable resources as well. Those resources were actually renewable in practice, since the rivers of land-locked countries replenished them.

A/CONF.62/C.2/SR.25

English

Page 16

(Mr. Tredinnick, Bolivia)

The developing countries had to assume a leading role in structuring a new law of the sea which respected the legal equality of States, eliminated all forms of hegemony and dependence and applied the principles of international social justice to the use of ocean space and its natural resources beyond the territorial sea up to the maximum 200-mile limit. New and more just rules, more in accordance with the needs of the less advanced countries for development and economic diversification, were being established. The new law of the sea must be broad, modern, codified and observed in practice. It was clear from the general debate that there was a strong tendency to recognize the right of adjacent non-coastal countries to participate in the exploitation of renewable and non-renewable natural resources of the regional economic zone, regional patrimonial sea or regional tributary sea on a basis of equality with coastal States and without discrimination. The new law of the sea, if it was to be an instrument of justice, peace and well-being for all mankind, must establish a legal order which ensured the use of ocean space and the rational exploitation of all its resources by all countries, coastal and non-coastal. It must also prohibit any form of domination or coercion.

The interests of countries with long coastlines, and those of countries with short coastlines, no coastline, or other geographic disadvantages, could be reconciled only through the establishment of broad regional economic zones which did not exclude technical advice or financing provided by third parties subject to formal approval.

In the regional tributary zones which he had described, there would be innocent passage, freedom of navigation and overflight, and the freedom of laying submarine cables and pipelines, where applicable, without restrictions other than those required for peaceful coexistence or established by participating States, in exercise of their rights and in recognition of the interests of co-operation with other States.

The principle that the sea-bed and ocean floor beyond national jurisdiction were the common heritage of mankind, which had become a norm of international law, must apply, mutatis mutandis, to the regional tributary zone. That zone should be administered by a regional authority which had the power to undertake, by itself or in association with others under its effective control, exploration, exploitation and other related activities in the zone, to prevent undesirable economic and ecological

(Mr. Tredinnick, Bolivia)

consequences which could result from such activities, and to ensure equitable distribution of the resulting benefits, taking into account the special interests and needs of the developing countries, including the non-coastal countries.

The principles which he had set forth should be developed in a new convention so as to specify the extent of the rights and duties of participating States and of third parties, and to take into account the modern needs of economic development and social progress.

Mr. CISSE (Senegal) said that his delegation unreservedly supported the idea of an exclusive economic zone, including a fishing zone, of no more than 200 nautical miles measured from the baseline of the territorial sea.

In that area the coastal State would have exclusive rights to all living and mineral resources. However, in accordance with the OAU Declaration, African coastal States would permit participation in the exploitation of living resources by neighbouring land-locked countries on an equal footing. His delegation was gratified at the plans put forward by members of the West African Economic Community, half of which were land-locked, to pool the fisheries resources of their subregion, and hoped that similar projects would shortly be adopted in other African subregions, in order to implement the provisions of the Declaration of Heads of State of the Organization of African Unity.

In setting up an exclusive fishery zone, Senegal had provided for the possibility of bilateral agreements with any country wishing to participate in the exploitation of its fish resources in return for satisfactory assistance in achieving the objectives laid down by the Senegalese Government.

His delegation believed that, in accordance with the OAU Declaration and with existing law, mineral resources should remain under the exclusive sovereignty of the coastal State, including those to be found in the continental shelf. In that connexion, his Government intended to put forward a project defining and delimiting the continental shelf at the next OAU Conference of Ministers in February 1975.

A/CONF.62/C.2/53.25

English

Page 13

(Mr. Cisse, Senegal)

With regard to adjacent or opposite countries, his delegation was of the view that agreements should be concluded between the parties concerned on the basis of equitable principles, taking into account geographical and geomorphological factors as well as special circumstances.

His delegation, while denying that the exclusive economic zone could in any way be identified with the high sea, fully agreed with the principle of freedom of navigation, overflight and the laying of cables and pipelines. Nevertheless, the coastal State must be sovereign in taking all measures it considered necessary to prevent pollution, regulate scientific research, ensure the preservation of the marine environment, and the protection and renewal of living species.

He stressed, in conclusion, that the developing countries were prepared to accept respect for traditional freedoms on the understanding that that respect was not used to void of meaning the concept of the exclusive economic zone.

Sir Roger JACKLING (United Kingdom), having recalled the statement by the United Kingdom Minister of State in the plenary session that the United Kingdom was now prepared to discuss the concept of a 200-mile economic zone provided satisfactory rules for such a zone were established and freedom of navigation was maintained. He proposed to explain what those rules might be.

The concept of the economic zone had arisen from the desire of many coastal States to control all types of resources within 200 miles of their shores. In his delegation's view, such rights, described as sovereign and/or exclusive, already existed under current international law in respect of the minerals of the continental shelf throughout the natural prolongation of the land mass. The superjacent waters, however, remained high seas. The term "sovereign rights" as used in the Continental Shelf Convention of 1958 gave the coastal State all necessary rights, powers and jurisdiction for the stated purposes of exploring and exploiting the natural resources of the sea bottom. Those rights were "exclusive" in the sense that if a coastal State chose not to exploit the minerals in its continental shelf, no other State might do so without its consent. If the concept of the economic zone were to be embodied in the future law of the sea convention, those rights must, as part of that concept, be maintained throughout the natural prolongation of the land mass.

A/CONF.62/C.2/SR.25
English
Page 19

(Sir Roger Jackling, United Kingdom)

The concept of the economic zone also embraced the principle of exclusive rights for the coastal State to the resources of the water column out to a distance of 200 miles. That concept was not attractive to his delegation, and if it were embodied in a generally accepted and ratified convention would markedly affect existing and established rights in international law. Nevertheless, his delegation was prepared to envisage, as part of an over-all package, that the coastal States should gain such rights, on the clear understanding that, as in the case of the continental shelf, those rights extended to the resources, whereas the waters of the economic zone continued to be high seas where the freedoms of navigation and overflight were maintained. Moreover, in regard to living resources, due account should be taken of migratory habits, conservation requirements and above all the maximum utilization principle, since valuable sources of protein for human consumption must not go unused. In his delegation's view there should be an obligation upon the coastal State to allow others, perhaps with preferences for some, to fish for that part of the stock which its own vessels could not by themselves harvest.

That attitude marked a fundamental change from his delegation's previous position, although it was not, of course, the only delegation making such changes of position in an effort to contribute to general agreement. His delegation had, however, made it clear that it regarded the coastal State rights in an economic zone to be rights in relation to the resources of the sea-bed and the water column. It had therefore been deeply concerned to note a growing tendency to take for granted those rights to the resources, and to make demands for further competences, not directly related to resources, within the zone. There had been claims for exclusive coastal State jurisdiction over pollution control and scientific research. At their most extreme those demands had been expressed in terms which would render the concept of the 200-mile economic zone indistinguishable from that of a 200-mile territorial sea. That was not at all the proposition which his delegation had undertaken to discuss; it offered no prospect whatever of a general agreement leading to a convention universally accepted and ratified.

In discussing the concept of the economic zone there had been a tendency for delegations to speak in somewhat theoretical terms. He therefore thought that it might

A/CONF.62/C.2/SR.25

English

Page 20

(Sir Roger Jackling, United Kingdom)

be useful to spell out some of the practical difficulties that would result if economic zones were in effect to constitute a series of coastal State sovereignties.

With respect to the implications for scientific research, he pointed out that the benefits from marine science flowed indirectly to all States, coastal and land-locked. Its benefits were frequently on the scale of whole ocean basins, and it might be essential to make observations in key areas far from those most likely to benefit. It was therefore essential to all mankind to maintain the degree of freedom which marine scientists had required in the past to make observations in the ocean. It would be gravely prejudicial to science generally to give one coastal State the right to block research that was being carried out in the interests of a whole region and that might benefit the whole world.

Much the same considerations applied to shipping. The economy and efficiency of the shipping industries of the world, and hence of the trade of every country maritime or otherwise, depended on ships being able to the maximum extent possible to move without restriction from country to country, to follow the flows of trade, and to move for example from a summer trade in one part of the world to a winter trade in another. If coastal States had unconditional sovereignty entitling them to impose their own requirements regarding shipping design and construction, difficulties would be bound to ensue. It had been fairly widely accepted in the discussions that the result might well be that a ship able to go to country A would not be able to pass through the waters adjacent to country B, its neighbour. It was equally true that even regulations on discharge from ships, if applied over a wide sea area, affect their design and construction or equipment. If discharge were stopped at sea, ships would have to discharge on land, and that would mean that they must be designed and constructed to retain waste on board for the necessary period. At present shipbuilders knew the standard of construction they had to adopt to meet internationally agreed discharge regulations, but if they were faced with a series of varying regulations, it would be virtually impossible to design ships that could move through all the areas that were regulated. Consequently the economy of ship movement would be drastically reduced and the cost of world trade significantly increased.

/...

(Sir Roger Jackling, United Kingdom)

His delegation hoped that others would recognize that, in agreeing to discuss claims to jurisdiction over resources in an economic zone, his delegation and others had sought to advance the prospects of a successful negotiation. His delegation was, of course, ready to discuss the question of the jurisdiction necessary to ensure the enjoyment by the coastal State of those resources and their protection. But he urged members not to insist on claims to other competences for coastal States not directly related to the exercise of jurisdiction over resources, for such claims might prejudice the successful outcome of the Conference.

Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that the question of the economic zone was closely linked with the problems of the territorial sea and straits used for international navigation among others; such problems should be solved jointly, the interests of all States being taken into account.

The new concept of the economic zone had arisen as a result of the acceptance of the laws of a number of coastal States, and it should not be viewed as a rule of existing international law recognized by all States; it was not a question of de lege lata, but of de lege ferenda. It would be wrong to give the impression that the coastal States possessed economic zones and were making concessions to other States at the Conference. From the viewpoint of existing international law the future economic zone was an area of the high seas used by all States on an equal basis. The States which were now inclined to recognize an economic zone of 200 miles were in fact making a substantial concession to the coastal States concerned.

The rights of coastal States and those of all other States in the zone must be clearly defined. The extension of the rights of coastal States over a 200-mile economic zone had been justified by the need to guarantee their economic interest and improve the welfare of the peoples of developing coastal States. That was the reason why the zone had been called economic. Thus, in defining the régime for the economic zone the Conference must allow that within the zone the coastal State would have sovereign rights for the purposes of the preservation, exploration and exploitation of living and mineral resources. But the legitimate rights and interests of other States, which had long used the ocean space concerned as the high seas, must also be guaranteed.

/...

English
Page 22

(Mr. Sapozhnikov, Ukrainian SSR)

Demagogic statements had been made about the proposal that, if a coastal State did not take 100 per cent of the permissible annual catch of fish in the economic zone, the fishermen of other States must be allowed to catch the remainder. He wished to stress that any coastal State which could not take 100 per cent of the living resources in the economic zone would itself have an interest in allowing the vessels of other States to catch them, on the basis of authorization by the coastal State and making reasonable payments therefor. Indeed, if the coastal State did not permit such action, both it and the other States concerned would suffer, and the final result would be that the ever increasing population of the world would not obtain the protein it so much needed, and the unused living resources would simply be lost. It was no coincidence that the representatives of many developing countries had stated that if the Conference recognized the sovereign rights of coastal States to explore and exploit the natural resources of a 200-mile economic zone, they would certainly not want to destroy the fishing industries of other States.

The rights of the coastal State in the economic zone must be exercised without prejudice to the rights of all other States with regard to the freedoms of navigation, overflight and the laying of cables and pipelines, and the freedom of scientific research, provided that such research was not connected with the exploration and exploitation of natural resources. That obligation of coastal States had been widely recognized in draft articles and statements. However, there was a tendency to extend the rights of the coastal State beyond its own economic interests to such areas as the prevention of pollution and the conduct of scientific research. Some delegations had even proposed that the coastal State should establish customs, fiscal, immigration and health controls in the economic zone. If that were to happen, what would be left of the freedom of navigation? Under the pretext of exercising such controls, a coastal State might at any time detain a foreign vessel and reduce to nothing the freedom of navigation in the zone. That was the purpose of the attempts to replace the concept of the economic zone with such terms as national zone or sea. A clear distinction must be made between the régime of the territorial sea and that of the economic zone. The other legitimate interests of coastal States would be fully guaranteed by the rights they enjoyed in the territorial sea and the contiguous zone, which must not exceed 12 miles.

Mr. TSHERING (Bhutan) said that from some arguments advanced in favour of the creation of an exclusive economic zone it was clear that some wished to claim all of the resources within that zone. There was a race among States to claim the riches of the sea, and some coastal States were even claiming jurisdiction up to the continental margin, including the shelf slope and rise, as an extension or natural prolongation of their territory. But a continental shelf might extend as far as 900 miles outwards from the shore in some cases. If no agreement were reached soon on the major issues, there was a danger that the jurisdiction of the coastal State would grow rapidly, extending further and further into the ocean even beyond 200 miles, and endangering the freedom of the high seas and the common heritage of mankind.

His delegation agreed with the view that the 1958 Geneva Convention on the Continental Shelf had become obsolete because of technological advances, and that it was unjust towards many new and developing States. However, the concept of the so-called exclusive economic zone was not a just one, and was in fact designed to exclude others. It would have serious implications for the viability of the international area and machinery to be established. Petroleum and natural gas deposits were usually situated in the continental margins and would be exploited first of all in shallow waters. If national jurisdiction were to have wide limits, most of those deposits would be excluded from the international régime. The question was whether the benefits from such exploitation should be enjoyed exclusively by coastal States and by those capable of exploiting such resources under concessions, or by the international community as a whole. If the answer was that the international community should benefit from the common heritage then the idea of exclusiveness must be rejected.

His country had a genuine interest in matters of sea-bed development and hoped that such development could be carried out in an orderly manner within the framework of an international régime, including strong international machinery. Any concept purporting to justify unilateral changes in the balance of oceanic rights and interests would violate the right of participation by land-locked and other geographically disadvantaged States. The exclusive economic zone would therefore be prejudicial to the rights and interests of other States. States with a long coastline - mainly the most advanced ones - would receive the lion's share, while the land-locked and disadvantaged States would receive nothing. Such a concept would make the rich countries richer and the poor countries poorer. The developing land-locked States were among the least developed countries and their special circumstances must be taken into consideration.